

EXHIBIT F

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----

4 In Re:

5 Bair Hugger Forced Air Warming

6 Products Liability Litigation

7

8 This Document Relates To:

9 All Actions MDL No. 15-2666 (JNE/FLM)

10 -----

11

12 DEPOSITION OF GARY S. SETTLES, Ph.D.

13 VOLUME I, PAGES 1 - 352

14 JULY 18, 2017

15

16

17 (The following is the deposition of GARY S.

18 SETTLES, Ph.D., taken pursuant to Notice of Taking

19 Deposition, via videotape, at the Hyatt Regency

20 Pittsburgh International Airport, 1111 Airport

21 Boulevard, in the City of Pittsburgh, State of

22 Pennsylvania, commencing at approximately 9:34

23 o'clock a.m., July 18, 2017.)

24

25

STIREWALT & ASSOCIATES
1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

3

1 4 Article, Airborne bacterial 139
contamination during orthopedic
2 surgery: A randomized controlled
pilot trial, Oguz, et al, Journal
3 of Clinical Anaesthesia, 2017
5 Article, Forced-air patient warming 139
4 blankets disrupt unidirectional
airflow, Legg, et al, The Bone &
5 Joint Journal, 2013
6 Article, Do forced air 139
patient-warming devices disrupt
unidirectional downward airflow?
7 Legg, et al, The Journal of Bone &
Joint Surgery, 2012
8 7 G. S. Settles Lab Notebook, 21 pgs. 165

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

2

1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Gabriel Assaad

4 KENNEDY HODGES

4409 Montrose Boulevard

Suite 200

5 Houston, Texas 77006

6 Genevieve M. Zimmerman

7 MESHBESHER & SPENCE, LTD.

1616 Park Avenue

8 Minneapolis, Minnesota 55404

9 On Behalf of the Defendants:

10 Peter J. Goss

11 BLACKWELL BURKE P.A.

431 South Seventh Street

Suite 2500

12 Minneapolis, Minnesota 55415

13 ALSO PRESENT:

14 Jason E. Przymus, Videographer

15 EXAMINATION INDEX

16 WITNESS EXAMINED BY PAGE

17 Dr. Settles Mr. Assaad 4

18 EXHIBIT INDEX

19 EXHIBIT DESCRIPTION PAGE

20 1 Schlieren Imaging of Operating-Room 91

21 Airflows Associated with Patient

22 Warming Blankets, Gary S. Settles,

23 Ph.D., June 1, 2017 91

24 2 Revised - Schlieren Imaging of

25 Operating-Room Airflows Associated

with Patient Warming Blankets, Gary

S. Settles, Ph.D., June 1, 2017 122

3 Article, Effect of forced-air

warming on the performance of

operating theatre laminar flow

ventilation, Dasari, et al,

Anaesthesia 2012

26

STIREWALT & ASSOCIATES
1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

4

09:34:03 1 PROCEEDINGS
09:34:03 2 (Witness sworn.)
3 GARY S. SETTLES, Ph.D.,
4 Called as a witness, being first
5 duly sworn, was examined and
6 testified as follows:
7 EXAMINATION
8 BY MR. ASSAAD:
09:34:17 9 Q. Please state your name for the record.
09:34:19 10 A. Gary Stuart Settles, S-E-T-T-L-E-S.
09:34:23 11 Q. Dr. Settles, my name is Gabriel Assaad and I
09:34:25 12 represent over 2500 plaintiffs in this multidistrict
09:34:31 13 litigation, and I'm going to ask you numerous
09:34:33 14 questions today regarding your expert report.
09:34:36 15 Do you understand that?
09:34:38 16 A. Yes.
09:34:38 17 Q. Have you ever had your deposition taken
09:34:40 18 before?
09:34:40 19 A. No.
09:34:41 20 Q. So this is the first time.
09:34:42 21 A. First time.
09:34:43 22 Q. Okay. Then I'm going to go through some
09:34:47 23 ground rules. First, I'm going to ask you numerous
09:34:49 24 questions, and you said you understood that; correct?
09:34:50 25 A. Yes.

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

93

11:19:12 1 Q. But why didn't you do that before you
 11:19:14 2 submitted your final report?
 11:19:15 3 A. Because I finished writing it just before
 11:19:17 4 the deadline.
 11:19:19 5 Q. Okay. You weren't given much time to do the
 11:19:22 6 studies, were you?
 11:19:25 7 A. I -- I wouldn't phrase it that way, but I'd
 11:19:27 8 say we were -- we were late in the game but we had
 11:19:29 9 enough time.
 11:19:30 10 Q. And actually you actually put it in your
 11:19:34 11 notes that there wasn't much time to do the studies.
 11:19:39 12 A. Yeah. I made such --
 11:19:41 13 Well actually that referred to, if you look
 11:19:43 14 to those notes, we were trying to decide what we could
 11:19:49 15 and could not do within the scope of the effort. And
 11:19:54 16 I was looking at Elghobashi's simulation and saw that
 11:19:57 17 he had done turbulence intensity in particle motion,
 11:20:01 18 and that referred to the turbulence intensity, there
 11:20:04 19 just wasn't any way we were going to make such
 11:20:07 20 measurements with the -- within the time and scope of
 11:20:09 21 the effort.
 11:20:11 22 Q. You were retained in April in this case?
 11:20:13 23 April of this year?
 11:20:14 24 A. Yes.
 11:20:15 25 Q. Okay. And how --

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

95

11:21:20 1 Q. Do you agree that's one of the assumptions
 11:21:21 2 that Dr. Abraham made in his case?
 11:21:24 3 A. If -- If that assumption's made I don't
 11:21:28 4 think it's correct.
 11:21:28 5 Q. Okay. So you --
 11:21:28 6 So if Dr. Abraham made that assumption, you
 11:21:31 7 would agree that that is not a correct assumption with
 11:21:34 8 respect to how the air flows out of the Bair Hugger
 11:21:37 9 blanket; correct?
 11:21:39 10 MR. GOSS: Would you need to review his
 11:21:42 11 report?
 11:21:42 12 Q. Just assume that that's his assumption. You
 11:21:44 13 agree that's a faulty assumption.
 11:21:48 14 A. In my report we saw some air coming out
 11:21:52 15 around the head and neck.
 11:21:53 16 Q. If Dr. Abraham made the assumption that all
 11:21:56 17 the air that the Bair Hugger generates comes out of
 11:21:59 18 the head and neck you agree with me that that is an
 11:22:02 19 incorrect assumption.
 11:22:10 20 MR. GOSS: Object to form, foundation.
 11:22:13 21 A. To give you an accurate answer I would have
 11:22:18 22 to go back and look at Dr. Abraham's report.
 11:22:21 23 Q. Assume --
 11:22:23 24 Would you agree with this statement: All
 11:22:24 25 the air that the Bair Hugger generates comes out from

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

94

11:20:18 1 Did 3M approach you or approach someone at
 11:20:20 2 FloViz?
 11:20:21 3 A. Me.
 11:20:22 4 Q. Okay. Do you know how 3M found you?
 11:20:26 5 A. I'm the schlieren expert.
 11:20:29 6 Q. Now you looked at the Bair Hugger blanket;
 11:20:31 7 correct?
 11:20:32 8 A. Oh yes.
 11:20:32 9 Q. Okay. Do you agree with me that there are
 11:20:38 10 hundreds, if not thousands of perforations in the Bair
 11:20:42 11 Hugger blanket that air flows out of?
 11:20:44 12 A. Many perforations, yes.
 11:20:46 13 Q. Do you agree with me that the majority of
 11:20:50 14 the air coming out of the Bair Hugger blanket probably
 11:20:52 15 goes over the arms and the chest as compared to the
 11:20:56 16 head and neck?
 11:20:59 17 MR. GOSS: Objection, foundation. You can
 11:21:01 18 answer if you -- if you can.
 11:21:04 19 A. I -- We saw air coming out around the head
 11:21:09 20 and neck, so there's some airflow there.
 11:21:10 21 Q. That wasn't my question, sir.
 11:21:12 22 A. A majority, I can't say for sure.
 11:21:14 23 Q. Okay. But would you agree with me not all
 11:21:16 24 the air comes out of the head and neck?
 11:21:18 25 A. Not all the air comes out.

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

96

11:22:27 1 the head and neck area.
 11:22:30 2 A. Not based on the work that I did, no.
 11:22:33 3 Q. And that's because there's holes that go
 11:22:35 4 along the entire length of the air -- of the blanket,
 11:22:38 5 correct, of the Bair Hugger?
 11:22:40 6 A. The holes go the entire length of the
 11:22:42 7 blanket.
 11:22:42 8 Q. Because it's warming the hands and the elbow
 11:22:45 9 and the shoulders and the chest and the other arms and
 11:22:48 10 hands; correct?
 11:22:49 11 Correct?
 11:22:50 12 A. The one we looked at, which is upper body
 11:22:53 13 with the arms extended, is doing what you just said.
 11:22:55 14 Q. And let's assume for this -- for this -- for
 11:22:57 15 this day at this deposition, that when I refer to the
 11:23:00 16 Bair Hugger blanket I'm referring to the 522 -- --
 11:23:00 17 A. Fair. Thank you.
 11:23:04 18 Q. -- upper body blanket. Fair? Okay.
 11:23:06 19 A. Yes.
 11:23:16 20 Q. So have you ever done work for 3M before?
 11:23:19 21 A. No. I gave a seminar at 3M, but that's not
 11:23:23 22 doing work for them.
 11:23:24 23 Q. When did you do a seminar at 3M?
 11:23:26 24 A. Six years ago.
 11:23:27 25 Q. For what division of 3M?

STIREWALT & ASSOCIATES

1-800-553-1953 info@stirewalt.com